

REMARKS

Claims 1-53 are presently pending. Claims 1, 2, 8-10 and 53 have been amended. Claims 3-5, 11, 13-15, 19-26, 29-50 and 52 were previously withdrawn.

Applicants respectfully request reconsideration of the application in view of the foregoing amendments and the remarks appearing below, which Applicants believe place the application in condition for allowance.

Rejections under 35 U.S.C. § 102***Boss***

The Examiner has again rejected claims 1, 6, 12, 16, 27, 28, 51 and 53 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3, 484,810 to Boss, stating that Boss discloses all of the elements of these claims. More particularly, the Examiner asserts that Applicants' prior amendment of the claims to recite a plurality of standardized like members does not define over Boss because Boss' upright standards and X-bracing members are like each other, e.g., in that they are made of the same materials, are structural members used to form a frame, etc.

Regarding independent claims 1 and 53, Applicants have amended these claims to state how the standardized members are like one another. In particular Applicants have amended claims 1 and 53 to each recite that each standardized member is like every other standardized member, except only that the lengths of these members may be different. Boss' upright standards and X-bracing members clearly are not the same as each other, excepting their lengths. The upright standards are tubular, whereas the X-bracing members are solid bars. Consequently, the Boss patent cannot anticipate amended independent claims 1 and 53, nor claims 6, 12 and 16 that depend therefrom.

Regarding independent claims 27 and 51, each of these claims as originally filed requires the frame to comprise a plurality of lapping pairs of members that are configured in a grid or grid-like manner. Boss simply does not disclose such a frame. The plain meaning of the term "grid" in the context of the present invention is "a network of uniformly spaced horizontal and

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perpendicular lines.” Webster’s Ninth New Collegiate Dictionary. [Emphasis added.] Boss’ frame members, i.e., upright standards and X-bracing members, do not form such a network of orthogonal members. Rather, Boss’ X-bracing members cross one another and form non-right angles relative to the upright standards. Such a configuration does not define a grid or form a grid-like frame. In the event that the Examiner is asserting that Boss’ shelf (36) is a “frame member,” Applicants additionally note that Boss’ shelf is not a frame member, but rather an item that is supported by the Boss frame, which consists of the upright standards, the X-bracing members and corresponding connectors. Because Boss does not disclose or suggest a grid of frame members, the Boss patent cannot anticipate amended independent claims 27 and 51, nor claim 28 that depends from claim 27.

For at least the foregoing reasons, Applicants respectfully request that the Examiner withdraw the present anticipation rejection made in view of the Boss patent.

Kamrud, Sr.

The Examiner has again rejected claims 1, 6, 7, 9, 12 and 16-18 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,676,472 to Kamrud, Sr., stating that Kamrud, Sr. discloses all of the limitations of these claims. More particularly, similar to the Boss patent above, the Examiner asserts that the Kamrud, Sr. first and second bracket arms are like each other because they share some characteristics.

However, independent claim 1, as amended, requires that the plurality of standardized members be the same as one another, excepting for their lengths. Clearly, the Kamrud, Sr. first and second brackets do not satisfy this limitation because they are different from each other in respects other than length. The first bracket (28) includes a pair of plates (38) receiving therebetween a portion of the second bracket (30) and for receiving a bolt (40). The second bracket does not include such plates so that it can fit between the plates. In addition, the second bracket, which comprises a tube, includes a pair of apertures in opposing walls of the tube for receiving the bolt. The first bracket does not include these apertures. Since these differences

exist, the Kamrud et al. first and second brackets do not meet the limitations imposed on the standardized members by the amendment to claim 1.

In addition, claim 1 requires, among other things, a plurality of first connectors connecting corresponding respective ones of a plurality of standardized members to one another. The Kamrud, Sr. device does not include a plurality of first connectors. Rather, the Kamrud, Sr. device includes only a single connector, i.e., the bolt (40).

In the present Office Action, the Examiner asserts that Kamrud, Sr. discloses a plurality of connectors because the Applicants claim "a plurality of first connectors" which by definition means "to join or fasten together by something intervening," citing Merriam Webster's Collegiate Dictionary Tenth Addition. Applicants respectfully assert that the Examiner's argument is incorrect for at least two reasons.

First, the term "connector" as used in the claims is a noun. However, the Examiner cites a definition for the term "connect," which is a verb. Applicants assert that the Examiner must cite a definition for the term connector to support an argument disagreeing with Applicants' position.

Second, the Examiner's application of the definition the Examiner cites is inconsistent with that definition. As noted above, a definition of "connect" is "to join or fasten together by something intervening." (Emphasis added). The "something intervening" is the thing that prevents the connected parts from separating. In other words, the "something intervening" is a "connector." In the Kamrud, Sr. connection, by all accounts there are only two things that can reasonably be asserted to be intervening between the two bracket arms, i.e., the bolt (40), individually, and, alternatively, the bolt assembly, which includes the bolt, the washers and the securing nut. In neither of these cases does the nut or either of the washers intervene between the connected parts, i.e., the first and second brackets arms. That is, neither the nut nor the washers prevent the brackets from separating. Therefore, the nut and the washers are not "connectors," in accordance with ordinary and customary meaning of the term in the art.

According to numerous dictionaries, a "connector" is "something that links devices or components: something that connects things, especially two pieces of equipment, or components

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of a single device or structure.” Microsoft Encarta online dictionary, attached as Exhibit A. In the Kamrud, Sr. device, the nut does not link the brackets together and the washers do not link the brackets together. Rather, it is the bolt that links the two brackets together. The nut and washer can be removed, and the brackets will still remain linked by the bolt, which is the connector. The washers and nut have their own, non-connecting, functions. The function of the washers may be to prevent damage to the first bracket by direct contact of the nut with the bracket and/or to inhibit the nut from working loose, among other things. The function of the nut is to secure the bolt and washers in place and/or to create frictional resistance sufficient to inhibit pivoting of one of the brackets relative to the other. Alternatively to considering the bolt, individually, to be the connector, as mentioned above, the entire bolt assembly can be considered to be the connector. Either way, the Kamrud, Sr. device has only one connector. Consequently, Kamrud, Sr. fails to disclose or suggest a plurality of first connectors as recited in independent claim 1.

Since Kamrud, Sr. fails to disclose or suggest at least these features of the support system of claim 1, the Kamrud, Sr. patent cannot anticipate amended independent claim 1, nor claims 6, 7, 9, 12 and 16-18 that depend therefrom. For at least this reason, Applicants respectfully request that the Examiner withdraw the present anticipation rejection made in view of the Kamrud, Sr. patent.

Rejection under 35 U.S.C. § 103

Boss/design choice

The Examiner has again rejected claims 8 and 10 under 35 U.S.C. §103 as being obvious in view of the Boss patent, discussed above, and further in view of ordinary skill in the art, stating that Boss discloses all of the limitations of these claims for the standardized members being made of folded cellulose pressboard. The Examiner then asserts that it would have been obvious to a person having ordinary skill in the art at the time of the invention as a matter of design choice to provide the Boss display stand with folded pressboard members. Again, Applicants respectfully disagree.

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In addition to claims 8 and 10 being patentable over the Boss patent for the reasons discussed above relative to the anticipation rejection made in view of the Boss patent, Applicants again assert that there simply is no disclosure or suggestion that other members, and particularly pressboard or tubular folded pressboard members, are acceptable alternatives to the metal frame members disclosed by Boss. Moreover, Applicants assert that the use of pressboard or tubular folded pressboard members would change the principle of operation of the Boss display stand. Such a change is contrary to the law on obviousness. See, e.g., MPEP § 2143.02 and In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Boss explicitly states and claims that an important feature of his invention is the cross-over bracing made up of two X-bracing members that cross over one another and are fastened with a single fastener at their mid-lengths so as to permit the members to pivot relative to one another with a scissor-like action. See, e.g., the Boss patent at col. 2, lines 12-17, col. 2, line 57 to col. 3, line 3 and col. 4, lines 40-50. Key characteristics of the X-bracing members that permits this scissor-like action are their thinness and high flexibility in a direction perpendicular to the plane of the cross-over bracing. These characteristics allow the ends of the X-bracing members to engage the rear surfaces of the upright standards. If the X-bracing members were relatively thick and stiff, such as would be the case if they were tubular members made of folded pressboard, the X-bracing members would not have the flexibility needed for the ends of X-bracing member 31 to engage the rear surfaces of the upright standards. This is so because X-bracing member 31 would be offset from the rear surfaces by a distance equal to the thickness of X-bracing member 32.

Consequently, substantial modifications would have to be made to the Boss display device in order to make it out of rigid, tubular pressboard. The law, however, indicates that when a prior art device must be modified substantially in order to support an obviousness-type rejection, the rejection is improper. In re Ratti, 270 F.2d at 813, 123 USPQ at 352 (holding that the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown [in the primary reference] as well as a change in the basic principles under which the construction was designed to operate").

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In addition, in asserting a *prima facie* case of obviousness, the Examiner must provide evidence of a suggestion or motivation in the prior art to make the asserted change to the prior art device. See, e.g., MPEP § 2142. The facts that asserted references can be combined and that an asserted modification is within the capabilities of one of ordinary skill in the art, by themselves, are not sufficient to establish a *prima facie* case of obviousness. See, e.g., MPEP § 2143.01. In the present case, Applicants believe the Examiner has not made the proper showing needed to support *prima facie* obviousness. The Boss patent, itself, certainly does not provide any suggestion or motivation to make the various members out of pressboard or tubular pressboard members. Importantly, such suggestion or motivation cannot be found in the prior art generally, including ordinary skill in the art.

As Applicants asserted in a prior Response, someone skilled in the art would not consider pressboard to be an acceptable alternative material to metal because if the Boss display stand were made out of metal it would be heavier and much less durable than the metal stand that Boss discloses. In addition, if the stand were made out of pressboard or tubular pressboard members, the design would have to be significantly changed. Indeed the Boss device, and particularly the cross-over bracing, would have to be more complex to overcome the difficulties, described above, caused by the X-bracing members being significantly thicker and more rigid. Implementing heavier and less durable members and increasing the complexity of the design cannot reasonably be asserted to support a suggestion or motivation to make the asserted change in members. Rather, these items support a motivation not to use tubular pressboard.

Applicants traverse the Examiner's assertion that the prior art shows any suggestion or motivation to make the Boss display stand from pressboard or tubular pressboard members. Consequently, Applicants request that the Examiner provide adequate evidence of such suggestion or motivation pursuant to U.S. Patent and Trademark Office Rules. See, e.g., MPEP § 2144.04.

For at least these reasons, Applicants respectfully request that the Examiner withdraw the present obviousness-type rejection of claim 8 and 10.

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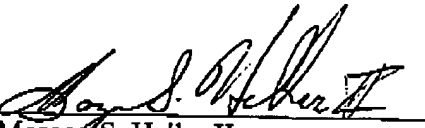
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CONCLUSION

In view of the foregoing, Applicants submit that claims 1-18, 27, 28, 51 and 53, as amended, are in condition for allowance. Therefore, prompt issuance of a Notice of Allowance is respectfully solicited. If any issues remain, the Examiner is encouraged to call the undersigned attorney at the number listed below.

Respectfully submitted,

KEVIN M. BIGGIE ET AL.

By: 
Morgan S. Heller II
Registration No.: 44,756

Downs Rachlin Martin PLLC
Tel: (802) 863-2375
Attorneys for Applicants

Attachment
Exhibit A

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Downs Rachlin Martin PLLC
199 Main Street
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(802) 863-2375